

Remarks

The interview with examiners Garrett and Cuomo on August 13, 2003 is acknowledged with appreciation. The prior art of record and the changes as set forth above were discussed at the interview. No agreement was reached and it was concluded that the present amendment would be submitted with arguments supporting the change to the independent claims.

Each of independent claims 1, 2, 4, 5, 6, 8 and 9 have been amended to recite that the base is adapted to be placed on a vehicle seat. Enclosed with this amendment is a copy of *In re Venezia*, 189 USPQ 149 (CCPA 1976) wherein the Court's opinion it is stated that

[f]or example, paragraph two of claim 31 calls for 'a pair of sleeves * * * each sleeve of said pair *adapted to be fitted* over the insulating jacket of one of said cables.' Rather than being a mere direction of activities in the future, this language imparts a structural limitation to the sleeve. Each sleeve is so structured or dimensioned that it can be fitted over the insulating jacket of a cable. A similar situation exists with respect to the 'adapted to be affixed' and 'adapted to be positioned' limitations in the third and fourth paragraphs of the claim. (See pages 151-152).

Thus, it is clear the court regards the "adapted for" limitation as a structural limitation.

Shafer et al (U.S. Patent No. 5,358,307) teaches a console which is mounted to the seat (20) of a vehicle (column 1, lines 6-7). The vehicle seat 20 is not adapted to be placed on the seat of a vehicle as recited in the present claims. Vehicle seat 20 is fixed to the vehicle which is structurally different from being adapted to be placed on the seat of a vehicle. Seat 20 would have to be structurally modified by at least removing it from the structure connecting it to the vehicle in order that it even be capable of being placed on another vehicle seat 20 and then the top seat would be too large in that the doors might not close, it would be too high (e.g., the back would hit or be too close to the roof, the rear view would be obstructed, and it would not be properly oriented) and seat belts in the car would not be safely usable, etc. For at least these reasons, these claims and dependent claims 2, 7 and 10 are patentable over Shafer et al.

Gignac et al (U.S. Patent No. 5,248,183) teaches a console which may be placed adjacent a vehicle seat (column 1, line 45). Gignac et al does not specifically show or describe a vehicle seat and it is evident that there is no teaching or suggestion of a juvenile seat adapted to be placed on the seat of a vehicle as recited in applicant's claims. In this regard, Gignac et al is no better than Shafer et al. For at least these reasons, these claims and dependent claims 2, 7 and 10 are patentable over Gignac et al.

Claims 11, 15 and 17 recite the limitation of a juvenile booster seat adapted to be placed on a vehicle seat in the preamble. The examiner's attention is directed to *In re Stencel*, 4 USPQ2d 1071 (Fed Cir 1987) which concluded "the limitations appearing in the preamble are necessary to give meaning to the claim and properly define the invention" (see page 1073). In *Eaton Corp. v. Rockwell International Corp.*, Fed. Cir., No. 01-1633, 3/27/03 the court found the preamble to the key patent claim on a heavy-duty truck transmission system limited that claim to automatic gear shifting.

Claims 11, 15 and 17 recite a juvenile booster seat adapted to be placed on a vehicle seat and, for the reasons noted above, neither Shafer et al or Gignac et al teach or suggest either a juvenile booster seat or one adapted to be placed on a vehicle seat. Accordingly, these claims and dependent claims (12-14 and 16) are allowable.

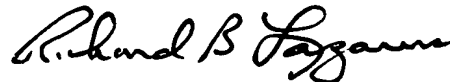
All of the claims avoid the prior art of record and allowance of the present application is, respectfully, requested.

If any issue remains to be resolved, the examiner is invited to telephone the undersigned so that prompt agreement can be reached.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20341-68796).

Respectfully submitted,

BARNES & THORNBURG



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Attachments:

Copy of case law.

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